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SEP 01 93

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August 26, 1993

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Opinion Committee

The Honorable Dan Morales
 Attorney General of Texas
 P.O. Box 12548, Capitol Station
 Austin, Texas 78711-2548

Attention: Opinions Committee

Dear General Morales:

MBJ
FILE # ML-22095-93
I.D.# 22095

I request your opinion of the following questions presented in this letter.

Before August 28, 1989, a municipal utility district (MUD) could impose "standby charges" under Section 54.204, Water Code. Section 6, Chapter 1218, Acts of the 71st Legislature, Regular Session, 1989, removed the express authorization for standby charges. Section 1 of that act amended Section 50.056, Water Code, which governs "standby fees" charged on undeveloped property within a district and provides for approval of the charges by the Texas Water Commission.

Section 8 of that act allowed previously adopted standby fees to continue in effect, subject to review and adjustment by the commission on request of a property owner in the district.

Section 54.519, Water Code, governs a MUD's services outside of the district's boundaries. Section 54.519(d) specifically authorizes a district to set and collect "rates, fees, rentals, tolls, or other charges for the use, services, and facilities of the water and sewer system which provide service to areas outside the district which are considered necessary...." Standby charges are not expressly addressed.

The Lakeway Municipal Utility District has imposed standby charges on property outside of the district since before the 1989 act cited above. There has been some controversy regarding whether the charges are valid or collectible. On behalf of the committee, I ask your opinion on the following questions:

(1) May the district impose and collect a standby charge on property outside of the boundaries of the district?

The Honorable Dan Morales

August 26, 1993

Page 2 of 2

(2) May the district continue to collect a standby charge imposed on property outside of the boundaries of the district before the effective date of Chapter 1218, Acts of the 71st Legislature, Regular Session, 1989?

(3) May the district bring a lawsuit to collect unpaid standby charges imposed on property outside of the boundaries of the district?

Thank you for your attention to this matter. Please feel free to contact me if any additional information would be of assistance.

Sincerely,

A handwritten signature in cursive script that reads "David Counts". The signature is written in dark ink and is positioned below the word "Sincerely,".

David Counts
Chairman, House Natural Resources Committee

DC/sw